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Zone Sports Center, LLC
Fresno Rock Taco, LLC
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UNITED STATES DISTRICT COURT
FOR EASTERN DISTRICT OF CALIFORNIA
FRESNO DISTRICT

ZONE SPORTS CENTER, INC. LLC,	)	CASE NO.
a California limited liability company;)	
FRESNO ROCK TACO, LLC., a	)	COMPLAINT FOR DAMAGES FOR
California limited liability company;	)	VIOLATION OF LANHAM ACT,
MILTON PETER BARBIS, an	)	SHERMAN ACT, CLAYTON ACT,
individual,	)	RICO, CARTWRIGHT ACT,
	)	CALIFORNIA FRANCHISE ACT,
Plaintiff,	)	BREACH OF CONTRACT,
	)	RESCISSION OF CONTRACT,
v.	)	MAIL FRAUD; WIRE FRAUD,
	)	COMMON LAW FRAUD,
RED HEAD, INC, dba Cabo Wabo	)	INTENTIONAL INFLICTION OF
Enterprises a California corporation;	)	EMOTIONAL DISTRESS, and
SKYY SPIRITS, LLC, a California	)	INTENTIONAL INTERFERENCE
limited liability company; GRUPPO	)	WITH PROSPECTIVE ECONOMIC
CAMPARI, a business of unknown	)	ADVANTAGE
corporate status; SAMMY HAGAR, an)	
individual; MARCO MONROY, an	)	(15 U.S.C. §1 et seq., 15 U.S.C. §14
individual; and DOES 1-10, inclusively	)	et. seq.; 15 U.S.C. §1051 et seq., §15
Defendants.	)	U.S.C. §1100 et seq., . 18 U.S.C.
	)	§1961 et seq., Cal. Corp. Code §31000
	)	et seq.)
)	
	)	DEMAND FOR JURY TRIAL

NOW COMES ZONE SPORTS CENTER, INC. LLC,, FRESNO ROCK TACO, LLC., and MILTON PETER BARBIS, who alleges as follows:

///

JURISDICTION

1
2 1. This cause of action arises, in part, under 15 U.S.C. §1 et seq., 15
3 U.S.C. §14 et seq., 15 U.S.C. §1051 et seq., 18 U.S.C. §1841, 18 U.S.C. §1843,
4 §18 U.S.C. §1961 et seq., as well as California Business and Professions Code
5 §16720 et seq., California Corporations Code §31000 et seq, and other selected
6 sections of the United States Code and the California Code, wherein plaintiffs seek
7 to redress deprivations of rights secured to him by the Constitution and statutes of
8 the United States of America and the State of California.

9 2. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1331,
10 §1337, §1339, and §1367.

11 3. The venue is proper in that the events took place in the County of
12 Fresno, State of California which is within the jurisdiction of this court.
13

PARTIES

14
15 4. Zone Sports Center, LLC dba Granite Park (hereinafter ZSC”) is and
16 was, at all times relevant to this action, a California limited liability company doing
17 business in the County of Fresno, State of California.

18 5. ZSC is a third party beneficiary to the License Agreement dated
19 December 7, 2006 between Red Head, Inc. dba Cabo Wabo Enterprises
20 (hereinafter “RHI”) and Fresno Rock Taco, LLC., dba Cabo Wabo Cantina Fresno
21 (hereinafter “FRT”) .

22 6. Fresno Rock Taco, LLC., dba Cabo Wabo Cantina Fresno (hereinafter
23 “FRT”) was, at all times relevant to this action, a California limited liability
24 company doing business in the County of Fresno, State of California,
25

26 7. Milton Peter Barbis is and was, at all times relevant to this action, a
27 resident of the County of Fresno, State of California,.
28

1 8. Red Head, Inc. dba Cabo Wabo Enterprises (hereinafter “RHI”) is and
2 was, at all times relevant to this action, a California corporation.

3 9. Skyy Spirits, LLC. (hereinafter “Skyy”) is and was, at all times relevant
4 to this action, a California limited liability company. Skyy is a wholly owned
5 subsidiary of Gruppo Campari. Skyy manufactures and distills alcoholic beverages
6 including but not limited to Cabo Wabo tequila. Skyy is the licensor and owner of
7 Cabo Wabo tequila.

8 10. Gruppo Campari, (hereinafter “Campari”) is a business of unknown
9 corporate organization doing business in California. Campari owns Skyy.

10 11. Sammy Hagar is and was, at all times relevant to this action, a resident
11 of the State of California and president of Red Head, Inc.

12 12. Marco Monroy is and was, at all times relevant to this action, a resident
13 of the State of California.

14 13. The true names of defendants Doe 1 through 10, inclusive, is now
15 unknown to plaintiffs who therefore sues said defendants by such fictitious names
16 but upon ascertaining the true identity of each Doe defendant, plaintiffs will
17 substitute same or seek leave to do so, in lieu of such fictitious name.

18 14. Plaintiffs are informed and believes and based thereon allege that each
19 of the above named defendants are in some way responsible for the injuries of
20 plaintiffs herein complained of.

21 15. Plaintiffs are informed and believes and based thereon allege that each
22 said Doe defendants is in some way responsible for plaintiffs’ injuries herein
23 complained of.

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SUMMARY OF MATERIAL FACTS

16. RHI is the licensor and owner of the trademark “Cabo Wabo Cantina” which is the mark for restaurant and bar services, nightclub services, retail store services and on-line retail store services.

17. RHI is also the licensor and owner of the trademark “Cabo Wabo” which is the mark for restaurant and bar services, nightclub services, retail store services and on-line retail store services.

18. RHI is not the licensor or the owner of the trademark “Cabo Wabo tequila.”

19. On or about December 7, 2006, FRT entered into a purported License Agreement (hereinafter “Agreement”) with RHI to develop a Cabo Wabo Cantina (hereinafter “Cantina”) in Fresno California.

20. The Agreement provided that FRT was licensed to use the trademarks “Cabo Wabo Cantina” and “Cabo Wabo.”

21. The goods and services listed in the Agreement are restaurant and bar services, nightclub services, retail store services and on-line retail store services.

22. The Agreement contained no clause relating to the brands of alcoholic beverages which were to be served by FRT in that RHI does not own or license the trademark Cabo Wabo tequila..

23. The Agreement is a hidden franchise agreement and as a matter of public policy, void on its face in that:

a. It was marketed as a license not a franchise.

b. RHI did not register the offering pursuant to California Corporations Code §31000 et seq.;

- c. RHI willingly and knowingly made false and untrue statements in the Agreement;
- d. RHI, Hagar and Monroy made false and untrue statements to FRT, ZSC and Barbis to induce FRT to execute the Agreement.
- e. The Agreement further provides:
 - 1) For use of RHI's trademarks of Cabo Wabo Cantina and Cabo Wabo.
 - 2) FRT was required to pay \$100,000 as an up front fee upon the execution of the License Agreement and an additional \$75,000.00 thereafter.
 - 3) RHI was to design the facility.
 - 4) RHI was to train all food service staff before the opening and on a continuing basis thereafter.
 - 5) RHI was to provide, at its own expense, FRT with the elements of the Cabo Wabo Cantina System including without limitation marketing plans, and techniques, training manual, food names, food and beverage recipes, food and beverage preparation techniques, menus, trade dress, styles, décor, training materials, and operating technologies.

24. On March 7, Hagar announced at a press conference in San Francisco that RHI had licensed FRT for a Cantina to be located in Fresno, California.

25. Hagar made the abovementioned announcement without the knowledge or approval of FRT and in violation of an oral agreement not to make the announcement in any other location except Fresno, California.

26. As a result of the premature announcement, FRT suffered from

1 adverse publicity in the local press in Fresno, California.

2 27. Based on the announcement, the construction lender approved money
3 for the construction of the Cantina without final construction plans and without the
4 knowledge of FRT who was obliged to work with and pay the construction lender.

5 28. Construction schematic drawings were completed and approved over
6 the initial three month period following the signing of the License Agreement, i.e.
7 approximately March 23, 2007.

8 29. The construction drawings approval process went through RHI's
9 architect, restaurant consultant and project manager, and Monroy who is an
10 architect and manages all operations of the Cabo Wabo Cantina in Cabo San Lucas.
11

12 30. Subsequently, FRT executed a lease with ZSC for the premises where
13 the Cantina was to be located. The lease was for 10 years at an approximate
14 average monthly rental of \$38,560.00.

15 31. On or about April 6, 2007, relying on the execution of the Agreement
16 between RHI and FRT, the approval of the construction drawings for the Cantina
17 by RHI, and the 10 year lease between FRT and ZSC, ZSC began construction on
18 the \$10 million building especially built for a Cantina for FRT as per the
19 construction drawings approved by RHI.

20 32. ZSC then sought other tenants for Granite Park and ultimately executed
21 leases with nine additional tenants at the Granite Park location; Fine Irishmen, Me-
22 N-Ed's Victory Grill, RED, Memphis Blues, Bistro Las Caux, Touchstone
23 Climbing Gyms, Le Reve Catering and the Forest Theme Park.

24 33. ZSC began and completed construction for buildings for the Fine
25 Irishman and Victory Grill.

26 34. ZSC entered into the aforementioned leases solely on the basis that
27 the Cantina would be opened in that location and the Cantina was to be the anchor
28

1 tenant in the Granite Park entertainment center.

2 35. During the entire construction process Hagar, Monroy and RHI micro-
3 managed the design and construction of the Cantina building and Cantina interior.
4 The micro-management was administered down to such detail of how and where
5 plants and trees were planted outside the Cantina, designs on the floor and heights
6 of soffits above the bar. The micro-management of the construction caused great
7 delays and enormous additional expenses to ZSC.

8 36. The interest expense caused by the delays in construction was over \$2
9 million.

10 37. Subsequently, Hagar demanded that construction be halted on the
11 building construction because Hagar wanted to make a major change in the outside
12 appearance of the building. The change he demanded made was to add a forty foot
13 high lighthouse to the exterior of the building. The addition of the lighthouse by
14 Hagar was not a part of other Cabo Wabo Cantinas [Harrah's Cabo Wabo Lake
15 Tahoe and two other proposed cantinas].
16

17 38. The abovementioned change was substantial enough to change the
18 entire layout of the exterior of the building and change the entrance to the Cantina.
19 The entire people flow of the internal operations of the Cantina was changed.
20 These changes caused a nine month delay in the completion of the construction of
21 the Cantina.

22 39. On June 17, 2007, RHI began interviewing potential candidates for
23 chef for FRT although the exterior of the building had not been completed and the
24 interior restaurant design drawings were not yet complete.

25 40. During the period January 2007 through August 2008, many obstacles,
26 in addition to the construction changes and delays, were placed in the path of FRT
27 and ZSC, which made it difficult to complete the construction and open the
28

1 Cantina:

- 2 a. On December 28, 2007, FRT learned for the first time, that there was
3 no Cabo Wabo Cantina System in existence as was represented in the
4 Agreement and by RHI, Hagar and Monroy.
- 5 b. FRT was forced to attempt to create a restaurant operational system
6 and menus at its own expense even though the Agreement represented
7 that the restaurant operational system was in place and paid for by
8 RHI. RHI refused to pay for the restaurant operational system.
- 9 c. In spite of the fact that RHI failed to provide a restaurant operational
10 system and then refused to pay the cost of creating one, RHI
11 demanded that every aspect of the menu and operating system that
12 FRT was designing was to be submitted to RHI, Monroy and Hagar
13 for their approval. This approval process delayed the creation of an
14 operational system to the extent, that it was never completed. FRT
15 would submit a system to RHI, who would approve it and then submit
16 it to Monroy who would approve it. Monroy would submit the plan
17 to Hagar who delayed responding to FRT's system design to the
18 extent the system was never completed and never implemented.
- 19 d. On March 25, 2008, RHI demanded that FRT forward a complete
20 restaurant operational system and menus that FRT had created thus far
21 so that RHI could use the menu and system to market the
22 license/franchise to a potential buyer in Dubai.

23
24 41. When FRT attempted to enroll sponsors for the Cantina, RHI warned
25 FRT on June 16, 2008 that FRT could not sign any sponsorship proposals with any
26 vendor and that any funds received from sponsorships proposals sold by FRT
27 belonged to RHI not FRT.
28

1 42. Also in June 16, 2008, contrary to the terms of the Agreement, FRT
2 was informed that if and when RHI created a Cabo Wabo beer, FRT would be
3 required to carry that beer as the “house pour.”

4 43. On August 14, 2008, contrary to the terms of the Agreement, FRT was
5 informed that RHI, Skyy and Campari required that the Wabo Cabo brand tequila
6 would be serviced exclusively as the well drink in the Cantina. No other tequila
7 would be permitted

8 44 RHI, Skyy and Campari demanded that all other tequilas had to be
9 hidden out of sight and be served as call drinks only.

10 45. FRT received an email from the president of the Cabo Wabo Tequila
11 brand i.e. SKYY Spirits/CAMPARI stating that they were in complete agreement
12 with RHI/Hagar and that FRT must use Cabo Wabo tequila as the well drink and
13 on all menu items. All other tequila must be kept out of sight.

14 46. The above mentioned requirements in ¶42 and ¶43 were a material
15 change to the Agreement and material difference from the requirements at Harrah’s
16 Cabo Wabo Cantina Lake Tahoe. FRT did not agree to this requirement.

17 47. When Barbis and FRT asked Hagar why FRT wasn’t allowed to use
18 the beer and tequila that was most profitable to FRT, Barbis was told by Hagar
19 “because I fucking said so.” Hagar stated “I’m a hall of fame rock star, I can do
20 what I want.”

21 48. Hagar also stated that because FRT was challenging him and
22 disagreeing with him, Hagar was not going to appear for the grand opening as per
23 the terms and conditions in the Agreement. This was a material breach of the
24 Agreement.

25 49. Hagar and RHI told FRT that RHI would terminate the license if FRT
26 did not do what Hagar, Monroy and RHI, Skyy and Campari told FRT to do.
27
28

1 50. Hagar then left a message on Barbis' voicemail stating multiple times
2 that "I am going to fucking kill you."

3 51. The abovementioned message, recorded on the voicemail, was played
4 to multiple people to hear and attest to. When the message was played to Monroy
5 he looked shocked and was very disturbed by the message.

6 52. Monroy then grabbed Barbis' cell phone and erased the message.

7
8 53. RHI required that FRT to use Hagar's sound system manager to
9 design, build and install the sound system. During the marketing of the Cantina to
10 FRT, RHI and Hagar estimated to FRT that a budget of \$200,000 for the sound,
11 lighting and television entertainment system was adequate.

12 54. RHI and Hagar demanded that FRT use Hagar's personal sound system
13 manager. When construction on the sound system was finished, the costs had
14 ballooned to \$484,000. The sound system manager told Barbis that FRT had to do
15 what it was told or he will report it to Hagar and Hagar would terminate the
16 Agreement.

17 55. It was a common practice in the Fresno market at that time to charge
18 a cover charge for entering nightclubs. The various clubs' charges ranged from \$10
19 to \$25.

20 56 FRT decided to charge \$20,

21 57. Although the agreement is silent on a cover charge, Hagar, Monroy
22 and RHI threatened FRT stating that FRT was not allowed to charge a cover charge
23 and if it did, it was in violation of the marketing procedures, and would be a
24 violation of the Agreement.

25 58. The Cantina finally opened on August 28, 2008.

26 59. During the first two months of the operations of the Cantina, the
27 average nightly attendance ranged between 1,800 people and 2,400 people.
28

1 60. This lack of a cover charge policy cost the plaintiff \$2.4 million over
2 the first two months of the business.

3 61. The construction delays, the interest on the construction loan and the
4 lack of a cover charge resulted in almost 5.5 million dollars in out-of-pocket costs
5 and lost revenue.

6 **FIRST CAUSE OF ACTION**

7 (Violation of Sherman Act, 15 U.S.C. §1 et seq.)

8 (against RHI, Skyy and Campari)

9
10 (by FRT and ZSC)

11 62. Plaintiff refers to and repleads each and every allegation contained in
12 paragraphs 1 through 61 and each of them inclusively and by this reference
13 incorporates the same herein and makes each a part thereof.

14 63. The Agreement contains no clause or provision relating to the brand of
15 alcoholic beverages which were to be served by FRT in the Cantina.

16 64. On or about August 14, 2008, two weeks before the grand opening of
17 the Cantina, Skyy and Campari advised FRT that it could only serve Cabo Wabo
18 tequila in the Cantina. FRT was warned by RHI, Skyy and Campari that if FRT
19 sold any other brand of tequila, FRT would be in violation of the Agreement and
20 RHI would terminate the Agreement.
21

22 65. RHI, Skyy and Campari tied the exclusive selling of Cabo Wabo tequila
23 to the Agreement including a threat to terminate the Agreement if FRT did not
24 comply.

25 66. RHI, Skyy and Campari tied the exclusive sale of Cabo Wabo tequila
26 as a condition of continuing to be a Licensee of RHI, in violation of 15 U.S.C. §1
27 et seq..
28

1 67. Based on the pro forma analysis by RHI given to FRT during the
2 marketing stage, FRT would have operating income of \$19,788,982.00 over the
3 first ten years.

4 68. As a proximate cause of the aforementioned acts and omissions of
5 Defendants, and each of them, and by reason thereof, ZSC was deprived of an
6 approximate average monthly rental income from FRT in an amount of \$38,560.00.
7 The FRT/ZSC lease was a ten year lease. The total rental loss to ZSC is
8 approximately \$4,627,000.00. ZSC is entitled to treble damages in the amount of
9 \$12,960,000.00.

10 69. As a proximate cause of the aforementioned acts and omissions of
11 Defendants, and each of them, FRT was deprived of operating income of
12 \$19,788,982.00 or an estimated \$12,000,000.00 after tax profits. RHI is entitled
13 to treble damages in the amount of \$59,366,946.00.

14 70. As a proximate cause of the aforementioned acts and omissions, FRT
15 has incurred actual losses of \$5,500,000.00. FRT is entitled to treble damages in
16 the amount of \$16,500,000.00.

17 71. By reason of the aforementioned acts and omissions of defendants,
18 FRT and ZSC were required to and did retain several attorneys to defend
19 themselves in many the civil actions against them which resulted from the
20 violations by RHI, Skyy and Campari, and to render legal assistance to FRT and
21 ZSC that they might vindicate themselves from in any civil action; and by reason
22 thereof, plaintiffs request payment by RHI, Skyy and Campari of all attorney's fees
23 and litigation costs incurred in those proceedings.

24 72. By reason of the aforementioned acts and omissions of Defendants,
25 FRT and ZSC were required to and did retain an attorney to institute and prosecute
26 the within action, and to render legal assistance to FRT that they might vindicate
27 the loss and impairment of its aforementioned rights; and by reason thereof, FRT
28

1 requests payment by Defendants of reasonable attorney's fees pursuant to
2 applicable statute.

3 **SECOND CAUSE OF ACTION**

4 (Violation of Cartwright Act, California Business & Professions Code §16720)

5 (against RHI, Skyy and Campari)

6 (by FRT and ZSC)

7
8 73. Plaintiff refers to and repleads each and every allegation contained in
9 paragraphs 1 through 72 and each of them inclusively and by this reference
10 incorporates the same herein and makes each a part thereof.

11 74. RHI, Skyy and Campari tied the exclusive sale of Cabo Wabo tequila
12 as a condition of continuing to be a Licensee of RHI, in violation of California
13 Business and Professions Code §167200 et seq.

14 75. As a proximate cause of the aforementioned acts and omissions of
15 Defendants, and each of them, and by reason thereof, ZSC was deprived of an
16 approximate average monthly rental income from FRT in an amount of \$38,560.00.
17 The FRT/ZSC lease was a ten year lease. The total rental loss to ZSC is
18 approximately \$4,627,000.00. ZSC is entitled to treble damages in the amount of
19 \$12,960,000.00.

20
21 76. As a proximate cause of the aforementioned acts and omissions of
22 Defendants, and each of them, FRT was deprived of operating income of
23 \$19,788,982.00 or an estimated \$12,000,000.00 after tax profits. RHI is entitled
24 to treble damages in the amount of \$59,366,946.00.

25 77. As a proximate cause of the aforementioned acts and omissions, FRT
26 has incurred actual losses of \$5,500,000.00. FRT is entitled to treble damages in
27 the amount of \$16,500,000.00.

28 78. By reason of the aforementioned acts and omissions of defendants,

1 84. Hagar, Monroy, RHI, Skyy and Campari engaged in unfair trade
2 practices when it induced FRT to enter into the Agreement based on fraudulent
3 misrepresentations and omissions of material facts.

4 85. Based on the pro forma analysis by RHI given to FRT during the
5 marketing stage of the negotiations, FRT would have operating income of
6 \$19,788,982.00 over the first ten years..

7 86. As a proximate cause of the aforementioned acts and omissions of
8 Defendants, and each of them, and by reason thereof, ZSC was deprived of an
9 approximate average monthly rental income from FRT in an amount of \$38,560.00.
10 The FRT/ZSC lease was a ten year lease. The total rental loss to ZSC is
11 approximately \$4,627,000.00. ZSC is entitled to treble damages in the amount of
12 \$12,960,000.00.

13 87. As a proximate cause of the aforementioned acts and omissions of
14 Defendants, FRT was deprived of operating income of \$19,788,982.00 or an
15 estimated \$12,000,000.00 after tax profits.

16 88. As a proximate cause of the aforementioned acts and omissions, FRT
17 has incurred losses of \$5,500,000.00
18

19 89. By reason of the aforementioned acts and omissions of Defendants, and
20 each of them, plaintiffs were required to and did retain several attorneys to defend
21 themselves in many civil actions against them, and to render legal assistance to
22 plaintiffs that they might vindicate themselves from in any civil action; and by
23 reason thereof, plaintiffs request payment by defendants of all attorney's fees and
24 litigation costs charged in those proceedings.

25 90. By reason of the aforementioned acts and omissions of defendants,
26 plaintiffs were required to and did retain an attorney to institute and prosecute the
27 within action, and to render legal assistance to plaintiffs that they might vindicate
28

1 the loss and impairment of their aforementioned rights; and by reason thereof,
2 plaintiffs request payment by defendants of reasonable attorney's fees pursuant to
3 statute.

4 **FOURTH CAUSE OF ACTION**

5 (Violation of Clayton Act-15 U.S.C. §14 et seq.)

6 (against RHI, Skyy and Campari)

7 (by FRT and ZSC)

8
9 91. Plaintiff refers to and repleads each and every allegation contained in
10 paragraphs 1 through 79 and each of them inclusively and by this reference
11 incorporates the same herein and makes each a part thereof.

12 92. RHI, Skyy and Campari tied the exclusive sale of Cabo Wabo tequila
13 in the well as a condition of continuing to be a Licensee of RHI in violation of 15
14 U.S.C. §14 et seq.

15 93. Based on the pro forma analysis by RHI given to FRT during the
16 marketing stage of the negotiations, FRT would have operating income of
17 \$19,788,982.00 over the first ten years..

18 94. As a proximate cause of the aforementioned acts and omissions of
19 Defendants, and each of them, and by reason thereof, ZSC was deprived of an
20 approximate average monthly rental income from FRT in an amount of \$36,000.00.
21 The FRT/ZSC lease was a ten year lease. The total rental loss to ZSC is
22 approximately \$4,320,000.00. ZSC is entitled to treble damages in the amount of
23 \$12,960,000.00.
24

25 95. As a proximate cause of the aforementioned acts and omissions of
26 Defendants, FRT was deprived of operating income of \$19,788,982.00 or an
27 estimated \$12,000,000.00 after tax profits.

28 96. As a proximate cause of the aforementioned acts and omissions of

1 defendants, FRT has incurred losses of \$5,500,000.00

2 97. By reason of the aforementioned acts and omissions of defendants,
3 plaintiffs were required to and did retain several attorneys to defend themselves in
4 many civil actions against them, and to render legal assistance to plaintiffs that they
5 might vindicate themselves from in any civil action; and by reason thereof,
6 plaintiffs request payment by defendants of all attorney's fees and litigation costs
7 charged in those proceedings.

8 98. By reason of the aforementioned acts and omissions of defendants,
9 plaintiffs were required to and did retain an attorney to institute and prosecute the
10 within action, and to render legal assistance to plaintiff that they might vindicate
11 the loss and impairment of their aforementioned rights; and by reason thereof,
12 plaintiffs request payment by defendants of reasonable attorney's fees pursuant to
13 statute.

14 **FIFTH CAUSE OF ACTION**

15 **(RESCISSION OF LICENSE AGREEMENT)**

16 **(against RHI)**

17 **(by ZSC and FRT)**

18 99. Plaintiff refers to and repleads each and every allegation contained in
19 paragraphs 1 through 61 and each of them inclusively and by this reference
20 incorporates the same herein and makes each a part thereof.

21 100. The Agreement dated December 7, 2006 is a franchise agreement, not
22 a license agreement in that it provides for all three components of a franchise
23 agreement; 1) use of trademark, 2) payment of fee and 3) control of
24 licensee/franchisee.

25 101. RHI and FRT agreed that FRT would use RHI's mark. FRT agreed
26 to pay fees of \$175,000.00 and royalties of 8% of sales, and 3) RHI had imposed
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1 virtual complete control of the design, construction and operation of the Cantina.

2 102. Based on the willful and knowing misrepresentations of RHI and
3 willing and knowing failure to register the offering with the Corporations
4 Commissioner, FRT has the right, pursuant to California Corporations Code
5 §31300, to rescind the Agreement.

6 103. When FRT and RHI entered into the Agreement, there was a need for
7 a facility to locate the Cantina. With the full knowledge, consent and
8 encouragement of RHI, FRT executed a ten year lease with ZSC for the premises
9 owned by ZSC. RHI and FRT intended to confer a benefit on ZSC, i.e. the
10 approximate average monthly rental income of \$38,560.00.

11 104. Based on the pro forma analysis by RHI given to FRT during the
12 marketing stage of the negotiations, FRT would have operating income of
13 \$19,788,982.00 over the first ten years..

14 105. As a proximate cause of the aforementioned acts and omissions of
15 Defendants, and by reason thereof, ZSC was deprived of an approximate average
16 monthly rental income of \$38,560.00. The lease was for ten years. The total rental
17 loss to ZSC is \$4,627,000.00

18 106. As a proximate cause of the aforementioned acts and omissions of
19 Defendants, FRT was deprived of operating income of \$19,788,982.00 or an
20 estimated \$12,000,000.00 after tax profits.

21 107. As a proximate cause of the aforementioned acts and omissions, FRT
22 has incurred losses of \$5,500,000.00

23 108. The aforementioned acts and omissions of defendants were done by
24 defendants knowingly, intentionally and maliciously for the purpose of inflicting
25 mental pain, oppression and emotional distress upon plaintiffs, and in reckless,
26 wanton and callous disregard of plaintiff's well-being and security; and by reason
27
28

1 thereof, plaintiffs claim exemplary and punitive damages from defendants in the
2 sum of One Hundred Million Dollars (\$100,000,000.00).

3 109. By reason of the aforementioned acts and omissions of defendants,
4 plaintiffs were required to and did retain several attorneys to defend themselves in
5 many civil actions against them, and to render legal assistance to plaintiffs that they
6 might vindicate themselves from in any civil action; and by reason thereof,
7 plaintiffs request payment by defendants of all attorney's fees and litigation costs
8 charged in those proceedings.

9 110. By reason of the aforementioned acts and omissions of defendants,
10 plaintiffs were required to and did retain an attorney to institute and prosecute the
11 within action, and to render legal assistance to plaintiffs that he might vindicate the
12 loss and impairment of his aforementioned rights; and by reason thereof, plaintiffs
13 request payment by defendant of reasonable attorney's fees pursuant to statute.

14 **SIXTH CAUSE OF ACTION**

15 **(RESCISSION OF LICENSE AGREEMENT)**

16 **(against RHI)**

17 **(by ZSC and FRT)**

18
19 111. Plaintiff refers to and repleads each and every allegation contained in
20 paragraphs 1 through 61 and Paragraphs 100 through 110 and each of them
21 inclusively and by this reference incorporates the same herein and makes each a part
22 thereof.

23
24 112. The Agreement is a contract of adhesion and therefore, unenforceable
25 per se.

26 113. There was an absence of real negotiation and a disparity of bargaining
27 power between the RHI and FRT.

28 114. California courts have long recognized that franchise agreements are

1 contracts of adhesion because of the vastly superior bargaining strength of the
2 franchisor. California law treats contracts of adhesion as procedurally
3 unconscionable.

4 115. The Agreement was unconscionable at the time it was made and is not
5 enforceable in that the Agreement was marketed as a license not a franchise.

6 116. RHI implemented the Agreement as though it were a franchise not a
7 license.

8 117. Based on the unconscionability of the contract at the time it was made
9 and the knowing misrepresentations of RHI, FRT has the right, pursuant to
10 California Corporations Code §31300, to rescind the Agreement.

11 118. Based on the pro forma analysis by RHI given to FRT during the
12 marketing stage of the negotiations, FRT would have operating income of
13 \$19,788,982.00 over the first ten years.

14 119. As a proximate cause of the aforementioned acts and omissions of
15 Defendants, and by reason thereof, ZSC was deprived of an approximately average
16 monthly rental income of \$38,627.00. The lease was for ten years. The total rental
17 loss to ZSC is \$4,627,000.00

18 120. As a proximate cause of the aforementioned acts and omissions of
19 Defendants, FRT was deprived of operating income of \$19,788,982.00 or an
20 estimated \$12,000,000.00 after tax profits.

21 121. As a proximate cause of the aforementioned acts and omissions, FRT
22 has incurred losses of \$5,500,000.00

23 122. The aforementioned acts and omissions of defendants was done by
24 defendants knowingly, intentionally and maliciously for the purpose of inflicting
25 mental pain, oppression and emotional distress upon plaintiffs, and in reckless,
26 wanton and callous disregard of plaintiff's well-being and security; and by reason
27
28

1 thereof, plaintiff claims exemplary and punitive damages from defendants in the
2 sum of One Hundred Million Dollars (\$100,000,000.00).

3 123. By reason of the aforementioned acts and omissions of defendants,
4 plaintiffs were required to and did retain several attorneys to defend themselves in
5 many civil actions against them, and to render legal assistance to plaintiffs that they
6 might vindicate themselves from in any civil action; and by reason thereof, plaintiffs
7 request payment by defendants of all attorney's fees and litigation costs charged in
8 those proceedings.

9 124. By reason of the aforementioned acts and omissions of defendants,
10 plaintiffs were required to and did retain an attorney to institute and prosecute the
11 within action, and to render legal assistance to plaintiff that they might vindicate the
12 loss and impairment of their aforementioned rights; and by reason thereof, plaintiffs
13 request payment by defendant of reasonable attorney's fees pursuant to statute.

14 **SEVENTH CAUSE OF ACTION**

15 (RESCISSION OF CONFIDENTIAL SETTLEMENT AGREEMENT)

16 (against RHI)

17 (by Barbis and FRT)

18 125. Plaintiff refers to and repleads each and every allegation contained in
19 paragraphs 1 through 61 and Paragraphs 100 through 124, each of them inclusively
20 and by this reference incorporates the same herein and makes each a part thereof.

21 126. On or about December 22, 2008, RHI initiated a federal action in
22 violation of the Agreement. Paragraph 16 of the Licensing Agreement sets forth the
23 dispute resolution process. RHI did not make any attempt to comply with ¶16.

24 127. On or about March 19, 2009, FRT and RHI entered into a Confidential
25 Settlement Agreement (hereinafter "CSA"). This CSA is void in that the judicial
26 proceedings filed that resulted in the CSA were initiated in violation of ¶16.
27
28

1 128. Based on the pro forma analysis by RHI given to FRT during the
2 marketing stage of the negotiations, FRT would have operating income of
3 \$19,788,982.00 over the first ten years.

4 129. As a proximate cause of the aforementioned acts and omissions of
5 Defendants, FRT was deprived of operating income of \$19,788,982.00 or an
6 estimated \$12,000,000.00 after tax profits.

7 130. As a proximate cause of the aforementioned acts and omissions, FRT
8 has incurred losses of \$5,500,000.00
9

10 131. The aforementioned acts and omissions of defendants were done by
11 defendants knowingly, intentionally and maliciously for the purpose of inflicting
12 mental pain, oppression and emotional distress upon plaintiffs, and in reckless,
13 wanton and callous disregard of plaintiff's well-being and security; and by reason
14 thereof, plaintiff claims exemplary and punitive damages from defendants in the
15 sum of One Hundred Million Dollars (\$100,000,000.00).

16 132. By reason of the aforementioned acts and omissions of defendants, and
17 plaintiffs were required to and did retain several attorneys to defend themselves in
18 many civil actions against them, and to render legal assistance to plaintiffs that they
19 might vindicate them from in any civil action; and by reason thereof, plaintiffs
20 request payment by defendants of all attorney's fees and litigation costs charged in
21 those proceedings.

22 133. By reason of the aforementioned acts and omissions of defendants,
23 plaintiffs were required to and did retain an attorney to institute and prosecute the
24 within action, and to render legal assistance to plaintiffs that they might vindicate
25 the loss and impairment of their aforementioned rights; and by reason thereof,
26 plaintiffs request payment by defendant of reasonable attorney's fees pursuant to
27 statute.
28

EIGHTH CAUSE OF ACTION

(RESCISSION OF CONFIDENTIAL SETTLEMENT AGREEMENT)

(against RHI)

(by Barbis, ZSC and FRT)

134. Plaintiff refers to and repleads each and every allegation contained in paragraphs 1 through 61 and Paragraphs 100 through 133 each of them inclusively and by this reference incorporates the same herein and makes each a part thereof.

135. On or about March 19, 2009, FRT and RHI entered into a Confidential Settlement Agreement (hereinafter “CSA”).

136. The CSA is a contract which fails for lack of adequate consideration; the consideration received by FRT and Barbis was nominal and insignificant.

137. The CSA is a contract which fails because Barbis and FRT did not freely enter into the contract. Apparent consent was not real or free in that it was obtained through duress, menace, fraud, undue influence and/or mistake.

138. Barbis and FRT were under extreme duress and performed an act which otherwise would not have been performed and acquiesced in an act to which they otherwise would not have submitted. Hagar told Barbis that he [Hagar] was going to kill him. Barbis was told by a third party that there was a “hitman” hired to kill Barbis unless he [Barbis] settled the case.

139. FRT and Barbis was unduly influenced to executed the CSA when their counsel threatened to withdraw from the case unless they signed the CSA. FRT and Barbis’ counsel continued to represent them only if they executed the CSA.

140. FRT and Barbis allege economic duress which can be a basis for rescission of a settlement agreement where there are circumstances in that RHI and Hagar committed wrongful acts which were sufficiently coercive to cause a

1 reasonably prudent person faced with no reasonable alternative to succumb to RHI's
2 and Hagar's pressure.

3 141. Pursuant to California Corporations Code §31512 as well as common
4 law rescission , FRT and Barbis request the court to order rescission of the CSA.

5 142. Based on the pro forma analysis by RHI given to FRT during the
6 marketing stage of the negotiations, FRT would have operating income of
7 \$19,788,982.00 over the first ten years.

8 143. As a proximate cause of the aforementioned acts and omissions of
9 Defendants, and by reason thereof, ZSC was deprived of an approximately average
10 monthly rental income of \$38, 560.00. The lease was for ten years. The total rental
11 loss to ZSC is \$4,627,000.00

12 144. As a proximate cause of the aforementioned acts and omissions of
13 Defendants, FRT was deprived of operating income of \$19,788,982.00 or an
14 estimated \$12,000,000.00 after tax profits.

15 145. As a proximate cause of the aforementioned acts and omissions, FRT
16 has incurred losses of \$5,500,000.00

17 146. By reason of the aforementioned acts and omissions of defendants,
18 plaintiffs were required to and did retain several attorneys to defend themselves in
19 many civil actions against them, and to render legal assistance to plaintiffs that they
20 might vindicate themselves from in any civil action; and by reason thereof,
21 plaintiffs request payment by defendants of all attorney's fees and litigation costs
22 charged in those proceedings.

23 147. By reason of the aforementioned acts and omissions of defendants,
24 plaintiffs were required to and did retain an attorney to institute and prosecute the
25 within action, and to render legal assistance to plaintiffs that they might vindicate
26 the loss and impairment of their aforementioned rights; and by reason thereof,
27
28

1 plaintiffs request payment by defendants of reasonable attorney's fees pursuant to
2 statute.

3 **NINTH CAUSE OF ACTION**

4 (Rescission of Confidential Settlement Agreement)

5 (against RHI, Skyy, Campari, Hagar and Monroy)

6 (by FRT, ZSC and Barbis)

7
8 148. Plaintiff refers to and repleads each and every allegation contained in
9 paragraphs 1 through 201 and Paragraphs 100 through 147 and each of them
10 inclusively and by this reference incorporates the same herein and makes each a
11 part thereof.

12 149. Plaintiffs alleges that Defendants entered into the CSA for the purpose
13 of defrauding the United States and the State of California of taxes which FRT
14 owed and to which Barbis was individually liable.

15 150. Plaintiffs allege the Defendants were aware of the employment tax
16 liability of FRT and that FRT was going to pay that tax liability.

17 151. Plaintiffs allege that Defendants induced FRT and Barbis to divert the
18 funds which were going to be used to pay taxes, to defendants in settlement of their
19 action against FRT and Barbis.

20 152. In that the CSA was used to divert funds set aside for taxes, the CSA
21 is void as a matter of law.

22 153. As a proximate cause of the acts and omissions of Defendants,
23 Plaintiffs were injured in that \$57,689.29 that would have been used to pay taxes,
24 was instead paid to Defendants in settlement and Plaintiff is still liable for those
25 taxes.
26

TENTH CAUSE OF ACTION

(BREACH OF CONTRACT)

(against RHI)

(by FRT and ZSC)

154. Plaintiff refers to and repleads each and every allegation contained in paragraphs 1 through 153 and each of them inclusively and by this reference incorporates the same herein and makes each a part thereof.

155. The Agreement provides that RHI will deliver the Cabo Wabo Cantina System not less than four months before the scheduled opening of the Cantina.

156. The original scheduled opening date for the Cantina was August 1, 2007.

157 The Agreement provided and required the Cabo Wabo Cantina System to be delivered to FRT no later than April 1, 2007.

158. The Cabo Wabo Cantina System was not delivered by April 1, 2007.

159. The Cantina actually opened on August 28, 2008; RHI never delivered any Cabo Wabo Cantina System to FRT.

160. FRT opened the Cantina on August 28, 2008 without any operating system in place which produced a substantial diminution in profits and something just less than chaos in the operations of the Cantina.

161. As a proximate cause of not having an operating system in place, the business was operated on a day-to-day basis with decisions being made on a minute-to-minute basis. As a result, the expenses of operating the business exceeded the pro forma by large amounts.

162. The failure to deliver the Cabo Wabo Cantina System was a material

1 breach of the Agreement.

2 163. The Agreement provides that Hagar would appear at the grand opening
3 of the Cantina.

4 164. The grand opening was August 28, 2008.

5 165. Hagar failed to appear at the Cantina on August 28, 2008.

6 166. Hagar's failure to appear at the opening, in violation of the Agreement,
7 is a material breach of the Agreement.
8

9 167. After Hagar failed to appear at the opening on August 28, 2008,
10 Hagar, on September 15, 2008, demanded a new contract with FRT where Hagar
11 would appear for two days [on October 28 and 29, 2008] for a fee of \$9,230.00 per
12 night]. The charging of a fee was a material breach of the Agreement.

13 168. On October 23, 2008, Hagar unilaterally canceled the September 15,
14 2008 contract and demanded another new contract for October 28, 2008 for
15 \$28,000.00 for the one night. The charging of a fee was a material breach of the
16 Agreement.

17 169. Hagar appeared on October 28, 2008.

18 170. Based on the pro forma analysis by RHI given to FRT during the
19 marketing stage of the negotiations, FRT would have operating income of
20 \$19,788,982.00 over the first ten years.
21

22 171. As a proximate cause of the aforementioned acts and omissions of
23 Defendants, and by reason thereof, ZSC was deprived of the monthly rental income
24 of \$38,560.00. The lease was for ten years. The total rental loss to ZSC is
25 \$4,627,000.00.

26 172. As a proximate cause of the aforementioned acts and omissions of
27 Defendants, FRT was deprived of operating income of \$19,788,982.00 or an
28 estimated \$12,000,000.00 after tax profits.

1 173. As a proximate cause of the aforementioned acts and omissions, FRT
2 has incurred losses of \$5,500,000.00

3 174. By reason of the aforementioned acts and omissions of defendants,
4 plaintiffs were required to and did retain several attorneys to defend themselves in
5 many civil actions against them, and to render legal assistance to plaintiffs that they
6 might vindicate themselves from in any civil action; and by reason thereof,
7 plaintiffs request payment by defendants of all attorney's fees and litigation costs
8 charged in those proceedings.

9 175. By reason of the aforementioned acts and omissions of defendants,
10 plaintiffs were required to and did retain an attorney to institute and prosecute the
11 within action, and to render legal assistance to plaintiffs that they might vindicate
12 the loss and impairment of his aforementioned rights; and by reason thereof,
13 plaintiffs request payment by defendants of reasonable attorney's fees pursuant to
14 statute.

15 **ELEVENTH CAUSE OF ACTION**

16 (Violation of Public Policy)

17 (against RHI)

18 (by FRT)

19
20 176. Plaintiff refers to and repleads each and every allegation contained in
21 paragraphs 1 through 175 and each of them inclusively and by this reference
22 incorporates the same herein and makes each a part thereof.

23
24 177. The Agreement exceeds the limitations of a license agreement in that
25 it provides for the use of RHI's mark, payment in excess of \$500.00 and RHI
26 exercises extensive control over FRT.

27 178. The Agreement meets all the requirements of a franchise agreement.

28 179. Public policy sets forth that an agreement where the licensor/franchisor

1 who has misrepresented its product[s], failed to register its product[s], breached the
2 license/franchise agreement with the licensee/franchisee, is voidable and
3 unenforceable.

4 180 Based on the pro forma analysis by RHI given to FRT during the
5 marketing stage of the negotiations, FRT would have operating income of
6 \$19,788,982.00 over the first ten years..

7 181. As a proximate cause of the aforementioned acts and omissions of
8 Defendants, and by reason thereof, ZSC was deprived of an approximately average
9 monthly rental income of \$38,560.00 The lease was for ten years. The total rental
10 loss to ZSC is \$4,627,000.00

11 182. As a proximate cause of the aforementioned acts and omissions of
12 Defendants, FRT was deprived of operating income of \$19,788,982.00 or an
13 estimated \$12,000,000.00 after tax profits.

14 183. As a proximate cause of the aforementioned acts and omissions, FRT
15 has incurred losses of \$5,500,000.00

16 184. The aforementioned acts and omissions of defendants were done by
17 defendants knowingly, intentionally and maliciously for the purpose of inflicting
18 mental pain, oppression and emotional distress upon plaintiffs, and in reckless,
19 wanton and callous disregard of plaintiff's well-being and security; and by reason
20 thereof, plaintiff claims exemplary and punitive damages from defendants in the
21 sum of One Hundred Million Dollars (\$100,000,000.00).

22 185. By reason of the aforementioned acts and omissions of defendants,
23 plaintiffs were required to and did retain several attorneys to defend themselves in
24 many civil actions against them, and to render legal assistance to plaintiffs that they
25 might vindicate themselves from in any civil action; and by reason thereof,
26 plaintiffs request payment by defendants of all attorney's fees and litigation costs
27
28

1 charged in those proceedings.

2 186. By reason of the aforementioned acts and omissions of defendants,
3 plaintiffs were required to and did retain an attorney to institute and prosecute the
4 within action, and to render legal assistance to plaintiff that they might vindicate
5 the loss and impairment of their aforementioned rights; and by reason thereof,
6 plaintiffs request payment by defendants of reasonable attorney's fees pursuant to
7 statute.

8 **TWELFTH CAUSE OF ACTION**

9 (Common Law Fraud)

10 (against RHI, Hagar and Monroy)

11 (by FRT and ZSC)

12
13 187. Plaintiff refers to and repleads each and every allegation contained in
14 paragraphs 1 through 186 and each of them inclusively and by this reference
15 incorporates the same herein and makes each a part thereof.

16 188. Defendants engaged in a series of intentional misrepresentations
17 including but not limited to:

- 18
19 a. RHI, Hagar and Monroy represented that RHI had a Cabo Wabo
20 Cantina System when in fact, there was no Cabo Wabo Cantina
21 System.
- 22 b. RHI, Hagar and Monroy represented that Hagar would appear at the
23 opening of the Cantina when in fact, Hagar did not appear at the
24 opening.
- 25 c. RHI, Hagar and Monroy represented that FRT was purchasing a
26 license to use the trademarks known as Cabo Wabo and Cabo Wabo
27 Cantina when, in fact, FRT was contracting to purchase a franchise
28 from RHI and would be under close supervision and control of RHI.

1 189. Defendants engaged in a series of omissions, including but not limited
2 to:

- 3 a. Prior to and at the execution of the Agreement and for nine months
4 thereafter, RHI, Skyy, and Campari failed to advise FRT that there
5 was no Cabo Wabo Cantina System and RHI was depending on FRT
6 to design, create and implement a operational system for the Cantina.
7
8 b. Prior to and at the execution of the Agreement and for nine months
9 thereafter, RHI, Skyy, and Campari failed to advise FRT that the
10 tequila it could serve at the Cantina would be limited to Cabo Wabo
11 tequila.

12 190 Plaintiffs, relied, to their detriment on the aforementioned
13 misrepresentations.

14 191. Based on the pro forma analysis by RHI given to FRT during the
15 marketing stage of the negotiations, FRT would have operating income of
16 \$19,788,982.00 over the first ten years..

17 192. As a proximate cause of the aforementioned acts and omissions of
18 Defendants, and by reason thereof, ZSC was deprived of an approximately average
19 monthly rental income of \$38,560.00. The lease was for ten years. The total rental
20 loss to ZSC is \$4,627,000.00.

21 193. As a proximate cause of the aforementioned acts and omissions of
22 Defendants, FRT was deprived of operating income of \$19,788,982.00 or an
23 estimated \$12,000,000.00 after tax profits.

24 194. As a proximate cause of the aforementioned acts and omissions, FRT
25 has incurred losses of \$5,500,000.00
26

27 195. The aforementioned acts and omissions of defendants were done by
28 defendants knowingly, intentionally and maliciously for the purpose of inflicting

1 mental pain, oppression and emotional distress upon plaintiffs, and in reckless,
2 wanton and callous disregard of plaintiff's well-being and security; and by reason
3 thereof, plaintiff claims exemplary and punitive damages from defendants in the
4 sum of One Hundred Million Dollars (\$100,000,000.00).

5 196. By reason of the aforementioned acts and omissions of defendants,
6 plaintiffs were required to and did retain several attorneys to defend themselves in
7 any civil actions against them, and to render legal assistance to plaintiff that they
8 might vindicate him from in any civil action; and by reason thereof, plaintiffs
9 request payment by defendants of all attorney's fees and litigation costs charged in
10 those proceedings.

11 197. By reason of the aforementioned acts and omissions of defendants,
12 plaintiffs were required to and did retain an attorney to institute and prosecute the
13 within action, and to render legal assistance to plaintiffs that they might vindicate
14 the loss and impairment of their aforementioned rights; and by reason thereof,
15 plaintiffs request payment by defendant of reasonable attorney's fees pursuant to
16 statute.

17 **THIRTEENTH CAUSE OF ACTION**

18 (Intentional Infliction of Emotional Distress)

19 (against RHI, Hagar and Monroy)

20 (by FRT)

21 198. Plaintiff refers to and repleads each and every allegation contained in
22 paragraphs 1 through 197 and each of them inclusively and by this reference
23 incorporates the same herein and makes each a part thereof.
24

25 199. RHI, Skyy and Campari through the extreme and outrageous conduct
26 of Hagar and Monroy with the intention of causing extreme emotional distress and
27 the reckless disregard of the probability of causing emotional distress caused Barbis
28

1 to suffer severe and/or extreme emotional distress. The actual and proximate cause
2 of the emotional distress was Defendants' outrageous and extreme conduct.

3 200. As a proximate cause of the aforementioned acts and omissions, Barbis
4 has incurred losses of \$5,500,000.00.

5 201. The aforementioned acts and omissions of defendants were done by
6 defendants knowingly, intentionally and maliciously for the purpose of inflicting
7 mental pain, oppression and emotional distress upon plaintiffs, and in reckless,
8 wanton and callous disregard of plaintiff's well-being and security; and by reason
9 thereof, plaintiff claims exemplary and punitive damages from defendants in the
10 sum of One Hundred Million Dollars (\$100,000,000.00).

11 202. By reason of the aforementioned acts and omissions of defendants, and
12 plaintiff were required to and did retain several attorneys to defend himself in many
13 civil actions against him, and to render legal assistance to plaintiff that they might
14 vindicate him from in any civil action; and by reason thereof, plaintiff requests
15 payment by defendants of all attorney's fees and litigation costs charged in those
16 proceedings.
17

18
19 **FOURTEENTH CAUSE OF ACTION**

20 (Mail Fraud and Wire Fraud-18 U.S.C. §1841 & 1843)

21 (against RHI, Skyy, Campari, Hagar and Monroy)

22 (by FRT, ZSC and Barbis)
23

24 203. Plaintiff refers to and repleads each and every allegation contained in
25 paragraphs 1 through 202 and each of them inclusively and by this reference
26 incorporates the same herein and makes each a part thereof.

27 204. Plaintiffs alleges that Defendants used the United States Mail and
28 interstate wires to commit the fraudulent acts alleged in all of the other causes of

1 action set forth in this Complaint.

2 205. As a proximate cause of the acts and omissions of Defendants,
3 Plaintiffs were injured in their business as follows:

- 4 a. Based on the pro forma analysis by RHI given to FRT during the
5 marketing stage of the negotiations, FRT would have operating
6 income of \$19,788,982.00 over the first ten years.
- 7 b. As a proximate cause of the aforementioned acts and omissions of
8 Defendants, and by reason thereof, ZSC was deprived of the monthly
9 rental income of \$38,560.00.00. The lease was for ten years. The
10 total rental loss to ZSC is \$4,727,000.00.
- 11 c. As a proximate cause of the aforementioned acts and omissions of
12 Defendants, FRT was deprived of operating income of \$19,788,982.00
13 or an estimated \$12,000,000.00 after tax profits.
- 14 d. As a proximate cause of the aforementioned acts and omissions, FRT
15 has incurred losses of \$5,500,000.00
- 16 e. By reason of the aforementioned acts and omissions of defendants,
17 and plaintiff were required to and did retain several attorneys to
18 defend himself in many civil actions against him, and to render legal
19 assistance to plaintiff that they might vindicate him from in any civil
20 action; and by reason thereof, plaintiff requests payment by
21 defendants of all attorney's fees and litigation costs charged in those
22 proceedings.
- 23 f. By reason of the aforementioned acts and omissions of defendants,
24 plaintiff were required to and did retain an attorney to institute and
25 prosecute the within action, and to render legal assistance to plaintiff
26 that he might vindicate the loss and impairment of his aforementioned
27
28

rights; and by reason thereof, plaintiff requests payment by defendant of reasonable attorney's fees pursuant to statute.

FIFTEENTH CAUSE OF ACTION

(Intentional Interference with Prospective Economic Advantage)

(against RHI, Hagar and Monroy)

(by FRT and ZSC)

206. Plaintiff refers to and repleads each and every allegation contained in paragraphs 1 through 205 and each of them inclusively and by this reference incorporates the same herein and makes each a part thereof.

207. ZSC had an economic relationship with FRT, with the probability of future economic benefit to the both parties.

208. RHI, Hagar and Monroy had knowledge of the economic relationship [the lease].

209. RHI, Hagar and Monroy engaged in intentional acts designed to disrupt the relationship.

210. There was an actual disruption of the relationship [the lease was breached][the business was closed].

211; ZSC suffered economic harm proximately caused by the acts of the RHI, Hagar and Monroy.

212. As a proximate cause of the acts and omissions of Defendants, Plaintiffs were injured in their business as follows:

- a. Based on the pro forma analysis by RHI given to FRT during the marketing stage of the negotiations, FRT would have operating income of \$19,788,982.00 over the first ten years.
- b. As a proximate cause of the aforementioned acts and omissions of Defendants, and by reason thereof, ZSC was deprived of an

approximately average monthly rental income of \$38,560.00. The lease was for ten years. The total rental loss to ZSC is \$4,627,000.00.

c. As a proximate cause of the aforementioned acts and omissions of Defendants, FRT was deprived of operating income of \$19,788,982.00 or an estimated \$12,000,000.00 after tax profits.

d. As a proximate cause of the aforementioned acts and omissions, FRT has incurred losses of \$5,500,000.00

e. By reason of the aforementioned acts and omissions of defendants, and plaintiffs were required to and did retain several attorneys to defend himself in many civil actions against him, and to render legal assistance to plaintiff that they might vindicate him from in any civil action; and by reason thereof, plaintiff requests payment by defendants of all attorney's fees and litigation costs charged in those proceedings.

f. By reason of the aforementioned acts and omissions of defendants, plaintiffs were required to and did retain an attorney to institute and prosecute the within action, and to render legal assistance to plaintiffs that they might vindicate the loss and impairment of their aforementioned rights; and by reason thereof, plaintiffs request payment by defendant of reasonable attorney's fees pursuant to statute.

WHEREAS, plaintiff prays for damages against Defendants and each of them, as follows:

1. General damages in amount to be shown according to proof;
2. Punitive and exemplary damages, from each defendant, for each cause of action in which punitive damages are permitted in the sum of \$100,000,000.00;
3. Reasonable attorney's fees, costs and expenses as permitted by law

1 according to proof;

2 4. Such other and further relief as this Court may deem proper, appropriate
3 and just.
4

5 Dated: October 4, 2010

6 RICHARD HAMLISH
Counsel for Plaintiffs
7
8
9

10 **DEMAND FOR JURY TRIAL**

11 Pursuant to **Federal Rules of Civil Procedure Rule 38**, plaintiff hereby
12 demands a trial by jury.

13 Dated: October 4, 2010

14 RICHARD HAMLISH
Counsel for Plaintiffs
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